IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5899 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

VIMALKUMAR BABUBHAI PATEL - Respondent(s)

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Appearance :

GOVERNMENT PLEADER for Petitioner(s) : 1,
MR SUNIL C PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 05/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 26.03.2002 passed by the Labour Court, Navsari in reference (LCN) No.66/98 whereby the Labour Court has directed the petitioner to reinstate the respondent on

his original post with continuity of service and full backwages.

2. The brief facts of the case are that the respondent was working as a Rojamdar in the petitioner hospital since 01.07.94 for a monthly pay of Rs. 580/-. On 07.02.97, he was discharged from service without any notice pay. Being aggrieved by this, the respondent raised a dispute which was in turn referred to the Labour Court, Navsari for adjudication. The Labour Court, thereafter, passed the aforesaid award.

3. Learned counsel for the petitioner contended that the Labour Court has ignored the evidence on record and peculiar facts of the case while passing the award of reinstatement and backwages.

4. Learned counsel for the respondent submitted that the order regarding reinstatement has been implemented by the petitioner on 01.01.2005.

5. After having gone through the facts and circumstances of the case and after having heard the learned counsel for the parties, I am of the view that if

the respondent has already been reinstated on 01.01.2005, then the only question which is open for consideration by this court is qua backwages. In any case, on perusal of documents it is evident that the Labour Court has considered the evidence on record in detail and has come to the conclusion that the respondent workman is required to be reinstated. I am in complete agreement with the reasonings adopted and the findings arrived at by the Labour Court. Therefore, in my opinion, the order of reinstatement is not required to be interfered.

6. However, from the award it appears that the Labour Court has granted backwages without giving any cogent and valid reasons. Backwages were granted merely on assumption without any concrete finding. As a result, I am of the opinion that the order of backwages is required to be quashed and set aside. Moreover, the law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the

said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

> “10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle “no work no 'ay” as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in

> Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.
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> 11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.
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> 12.The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

7. In the premises aforesaid, the award granting backwages is quashed and set aside. The award of reinstatement with continuity of service is confirmed. The award of the Labour Court is modified to the above extent. The order of reinstatement with continuity of

service will be carried out within six weeks from today. Rule is made absolute accordingly with no order as to costs.

(K.S. JHAVERI, J.)

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